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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere

Summary

Racial and ethnic profiling, defined as a reliance by law enforcement, security and border control personnel on race, colour, descent or national or ethnic origin as a basis for subjecting persons to detailed searches, identity checks and investigations, or for determining whether an individual is engaged in criminal activity, has been a persistent and pervasive issue in law enforcement, and its use has often arisen in connection with policies on national security and immigration. Racial and ethnic profiling often exacerbates discrimination already suffered as a result of ethnic origin or minority status and remains a serious challenge to realization of the rights of various racial, ethnic and religious groups across the world.

In the present report, the Special Rapporteur examines the contexts that have led to the use of racial and ethnic profiling and provides an overview of the different manifestations by law enforcement agencies of the phenomenon. He discusses the legal, policy and regulatory frameworks prohibiting racial and ethnic profiling, and the policies and laws adopted at the international, regional and national levels, and then presents different examples of good practices that have been initiated to counter and eliminate the use of racial and ethnic profiling.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 25/32. It builds upon a report of the previous mandate holder (A/HRC/15/53), in which the then Special Rapporteur discussed, among other issues, the question of racial profiling by law enforcement agencies, and expressed concern about individuals from minority groups or migrant backgrounds regularly being subjected to stops and searches, interrogations and arrests by police and immigration officials, in a discriminatory manner, on the basis of their perceived ethnic or religious affiliation. It also builds upon reports on country visits (A/HRC/20/33/Add.1 and A/HRC/23/56/Add.2), and takes into account recent developments and information gathered, notably through an expert meeting and additional research on the phenomenon.

2. Racial and ethnic profiling is commonly understood to mean a reliance by law enforcement, security and border control personnel on race, colour, descent or national or ethnic origin as a basis for subjecting persons to detailed searches, identity checks and investigations, or for determining whether an individual is engaged in criminal activity. Racial and ethnic profiling has been a persistent and pervasive issue in law enforcement, and its use has often arisen in connection with policies on national security and immigration. Police, immigration and detention officials often target various ethnic, religious or racial groups. Since 11 September 2001, in the United States of America and other countries, new patterns and contexts of racial and ethnic profiling have reportedly been affecting a growing number of individuals and minority groups. In Europe, law enforcement officials have reportedly targeted similar groups, especially since the recent economic crisis. Racial and ethnic profiling has also been reported in other parts of the world, such as Africa, Asia and the Middle East. Racial and ethnic profiling can thus exacerbate discrimination already suffered as a result of ethnic origin or minority status.

3. The Special Rapporteur is mandated by Human Rights Council resolution 7/34 of 28 March 2008 to address the practice of profiling and how it relates to counter-terrorism measures. The successive mandate holders have addressed this issue through their country visits and communications to Member States. The current Special Rapporteur drew attention to the issue of racial profiling in a country visit report that he presented to the Human Rights Council (A/HRC/23/56/Add.2). In various reports, the Special Rapporteur has highlighted new exacerbating contexts and has urged States to undertake urgent and comprehensive measures to combat this phenomenon.

4. Important measures have been taken at the international, regional and national levels to address the challenge of racial and ethnic profiling, ranging from the elaboration of an international legal framework, to regular assessments of States by United Nations and regional mechanisms, to the enactment and strengthening of legislative and criminal justice processes at the national level, to better collection of data and the training of law enforcement officers. Nevertheless, racial and ethnic profiling has persisted and continues to pose a serious challenge to the realization of the rights of individuals of some racial, ethnic and religious groups, across the world, and particularly in the light of contemporary counter-terrorism measures.

5. In the present report, the Special Rapporteur summarizes his activities, examines the context that has led to the use of racial and ethnic profiling, and provides an overview of the different manifestations of racial and ethnic profiling by law enforcement agencies such as the police, immigration agencies and other security entities. He then provides an overview of the legal, policy and regulatory frameworks prohibiting racial profiling and of the relevant policies and laws that have been adopted at the international, regional and national levels, before presenting different examples of good practices that have been

initiated and implemented to counter the use of racial profiling in law enforcement, by international and regional organizations, Governments, law enforcement agencies themselves, and civil society. The conclusions and recommendations are outlined in section IV.

II. Activities of the Special Rapporteur

A. Country visits

6. The Special Rapporteur would like to thank the Government of Greece and welcomes the agreement on dates for his visit in May 2015. He also hopes to receive a positive reply to his requests to make visits to Argentina and South Africa before the end of 2015.

7. The Special Rapporteur renewed his requests to visit Fiji, India, Japan and Thailand, for which he was awaiting invitations at the time of writing.

8. The Special Rapporteur visited the Republic of Korea from 29 September to 6 October 2014 (see A/HRC/29/46/Add.1). He expresses his gratitude to the Government for its cooperation and openness in the preparation and conduct of his visit.

B. Other activities

9. The Special Rapporteur was the keynote speaker at a round table on racial and ethnic profiling in police stop-and-search operations, organized by the Federal Anti-Discrimination Agency of Germany and held on 16 June 2014 in Berlin. The conference brought together international experts and academics to discuss challenges and good practices in Europe on this issue.

10. On the margins of the twenty-sixth session of the Human Rights Council, on 26 June 2014, the Special Rapporteur held a side event on racism on the Internet and social media, with the participation of the Executive Secretary of the European Commission against Racism and Intolerance, the Vice-Chair of the Federal Commission against Racism, of Switzerland, and a representative of the Association for Progressive Communications (A/HRC/26/49).

11. On 24 and 25 March 2015, the Special Rapporteur was invited as a panellist to a United Nations Educational, Scientific and Cultural Organization (UNESCO) round table entitled "Fighting racism and discrimination: history, memory and contemporary challenges", held to commemorate International Day for the Elimination of Racial Discrimination, at UNESCO headquarters in Paris. The conference examined the use of archives relating to the slave trade for the preservation of historical memory and for awareness and education.

III. Racial and ethnic profiling in law enforcement agencies

A. Context

12. Racial profiling has been a long-standing issue of concern for this mandate. In a report to the Human Rights Council on the manifestations of defamation of religions, and in particular on the ongoing serious implications of Islamophobia, for the enjoyment of all rights by their followers, the then Special Rapporteur highlighted some cases of racial and

ethnic profiling and stressed his concern about individuals from minority groups or migrant backgrounds regularly being subjected to stops and searches, interrogations and arrests in a discriminatory manner by law enforcement and immigration officials, solely on the basis of their perceived ethnic or religious affiliation. He called upon States not to resort to these practices, which were discriminatory and prohibited by international law (A/HRC/15/53 and Corr.1).

13. The current Special Rapporteur has, in various reports, highlighted the continuing problem of racial and ethnic profiling. In particular, and with regard to counter-terrorism, he has noted that migrants and minority groups are particularly vulnerable to these law enforcement practices, and that the global economic crisis only exacerbated the discrimination already taking place. The Special Rapporteur has continued to receive reports of racial and ethnic profiling across the globe, which points to the persistence of the problem in regular law enforcement activities, not only in the area of counter-terrorism.

14. The present report is intended to highlight the continuing violations, and to propose measures to address the problem of racial and ethnic profiling. In the report, the Special Rapporteur illustrates some manifestations of racial and ethnic profiling by different law enforcement agencies in various parts of the world. He discusses the applicable legislation and standards at the international, regional and national levels, and provides some examples of good practices that have been implemented by Governments and local authorities as well as by civil society actors.

15. The report builds on the work of previous mandate holders, on studies and reports by other special procedures mandate holders, and on the current Special Rapporteur's previous studies. In order to discuss the different manifestations of profiling, and to look at good practices undertaken, the Special Rapporteur held an expert meeting, in partnership with the Faculty of Law of the University of California, Los Angeles, on 11 and 12 November 2014, that was attended by a wide range of experts, academics and representatives of civil society organizations. Discussions were held on the key trends in the different manifestations of racial and ethnic profiling in police activities, at border and immigration facilities, and in detention facilities, on the impunity and lack of accountability for such acts committed by law enforcement agents, and on the need for disaggregated data collection and analysis to document these manifestations and the need to propose alternative law enforcement methods. Views were exchanged on the key legal and policy measures that had been taken at the international, regional and national levels, and on some good practices in combating racial and ethnic profiling that had been taken by States, international and regional organizations, civil society and the private sector. Some of those practices are included in the present report. The Special Rapporteur thanks the Faculty of Law of the University of California, Los Angeles for its assistance in the successful outcome of the expert meeting.

B. Manifestations of racial and ethnic profiling by law enforcement agencies

16. Police, immigration and detention officials frequently employ racial and ethnic profiling, in many different and pernicious ways. Government policies may also facilitate discretionary practices that allow law enforcement authorities to target groups or individuals on the basis of their skin colour, dress or facial hair or the languages they speak. Implicit biases also sometimes motivate profiling. Although some studies have demonstrated how ineffective racial and ethnic profiling is, officials continue to use the

practice.[1] One manifestation is the use of stop and frisk or stop and check mechanisms to target minorities. This practice results in the disproportionate targeting of these often vulnerable populations.[2] For example, in one South Pacific State, black males were subject to field contact by police officers at a rate 2.4 times higher than their representation in the general population.[3] In Europe, Roma communities are subjected to unequal levels of identity checks, and in some cases, the police stop Roma pedestrians three times more often than non-Roma pedestrians.[4] In one North American state, despite accounting for only 24 per cent of the population, persons of African descent were the subject of 63.3 per cent of stops of civilians by the police.[5]

17. Additionally, the police may disproportionately target certain minority groups for traffic stops. In one North American state, observers have documented police targeting drivers unevenly on the basis of their appearance.[6] The observers found no statistically significant difference in driving behaviour, yet 73.2 per cent of those stopped and arrested were persons of African descent even though such persons comprised only 13.5 per cent of all drivers and passengers.[7] Another report found that, in a municipality where this group made up 67 per cent of the population, 85 per cent of cars stopped by the police were from this group, as were 90 per cent of those summoned to court and 93 per cent of those arrested; in addition, the use of force by police officers was, in 88 per cent of cases, directed against persons of African descent. Similarly, in the judicial system in the same city, this group accounted for 95 per cent of convictions for pedestrian offences and 92 per cent of offences of disturbing the peace.[8]

18. A related manifestation of racial and ethnic profiling occurs when officials perform identity checks, ostensibly to address irregular immigration. In these types of stops, police or immigration authorities demand the production of identity documents to verify residence status in the country. Authorities use identity checks to target these persons and to stop and arrest asylum seekers.[9] In Europe, authorities are more likely to stop males of African and

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[1] Open Society Institute, *Ethnic Profiling in the Moscow Metro* (New York, 2006), available from http://www.lamberthconsulting.com/uploads/Ethnic_Profiling.pdf; and American Civil Liberties Union Foundation of Massachusetts, *Black, Brown and Targeted: A Report on Boston Police Department Street Encounters from 2007–2010* (ACLU Racial Justice Program, 2014).

[2] Rachel Neild and others, *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory* (New York, Open Society Institute, 2009), available from http://www.opensocietyfoundations.org/sites/default/files/profiling_20090526.pdf.

[3] Flemington and Kensington Community Legal Centre, summary of Gordon and Henstridge first reports.

[4] Open Society Institute, *"I Can Stop and Search Whoever I Want": Police Stops of Ethnic Minorities in Bulgaria, Hungary, and Spain* (New York, 2007), available from http://www.opensocietyfoundations.org/sites/default/files/profiling_20070419.pdf.

[5] Rachel Neild and others, *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory*; and American Civil Liberties Union Foundation of Massachusetts, *Black, Brown and Targeted: A Report on Boston Police Department Street Encounters from 2007–2010*.

[6] Amy Farrell and others, "Massachusetts racial and gender profiling final report: executive summary", Institute on Race and Justice (2004), available from http://iris.lib.neu.edu/cgi/viewcontent.cgi?article=1001&context=race_justice_pubs.

[7] John C. Lamberth, "Data collection and benchmarking of the Bias Policing Project" (Lamberth Consulting, 2006).

[8] United States Department of Justice, Civil Rights Division, "Investigation of the Ferguson Police Department", available from www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report_1.pdf.

[9] Aida Alami, "African migrants in Morocco tell of abuse", *New York Times*, 28 November 2012. Available from www.nytimes.com/2012/11/29/world/middleeast/african-migrants-in-morocco-tell-of-abuse.html?pagewanted=all&_r=1& Nov. 28, 2012.

Middle Eastern origin and from other minority populations on the basis of their appearance. A study in one Eastern European State showed that the police there disproportionately targeted persons of non-Slavic appearance on the metro.[10] Law enforcement officials have also targeted persons on the basis of their religion and conducted mass identity checks outside mosques.[11]

19. Another manifestation of racial and ethnic profiling is the increased use of force against minority populations by law enforcement officials.[12] In one Latin American State, persons of African descent were subjected to lethal force by the police at a rate that was two times higher than their overall representation in the population.[13] In the country concerned, lethal force by the police is frequently targeted at minority communities, often with the justification of controlling riots between those communities and the native population.

20. Racial and ethnic profiling in the context of immigration takes place at points of entry into States — official border crossings, and transportation hubs such as airports, railway stations and bus depots. At these locations, customs and border agencies force particular individuals or groups to undergo additional security checks and interviews. Often these persons are targeted because of the interrelatedness of immigration status with nationality, race or ethnicity. Security measures and surveillance policies enacted in relation to counter-terrorism efforts also motivate the use of racial and ethnic profiling. Indeed, around the world, States have regularized these processes such that they have become permanent fixtures of immigration systems.[14]

21. Within States, national and local authorities employ racial and ethnic profiling in their enforcement of immigration rules (A/HRC/17/33/Add.4). In some federal States, agreements between the central government and local police agencies lead to the overdelegation of front-end authority to persons likely to engage in profiling — a situation where non-immigration officials are directly enforcing immigration policy. Provinces and municipalities have enacted policies aimed at supplementing federal legislation, too. In both scenarios, discretionary powers enable profiling at the stop, arrest, investigation and prosecution stages.[15]

22. Profiling in immigration also limits the ability of victims to travel. For instance, States' refusal to issue birth registration and identification documents to members of particular ethnic groups impedes the movement of persons across borders and their access to State benefits (A/69/398). Sometimes, States permit or facilitate the use of racial and ethnic profiling by private actors. One Middle Eastern State allegedly restricts the movements of travellers of a particular ethnicity, including its own citizens. Furthermore, it reportedly allows an airline to subject this group to extensive search procedures (A/HRC/25/67). Profiling by private and governmental actors may also be facilitated by technology. Corporations have developed "risk profiling" software that they sell to law

[10] Open Society Institute, *Ethnic Profiling in the Moscow Metro*.

[11] Rachel Neild and others, *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory*.

[12] Robert Chanin and others, "Restoring a national consensus: the need to end racial profiling in America", The Leadership Conference (2011).

[13] Ignacio Cano, "Racial bias in police use of lethal force in Brazil", *Police Practice and Research: An International Journal* (2010).

[14] Rachel Neild and others, *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory*.

[15] Hiroshi Motomura, *Immigration Outside the Law* (Oxford University Press, 2014).

enforcement agencies for use at border checkpoints and in criminal databases. This has led to concerns about profiling being institutionalized.[16]

23. Racial and ethnic profiling is also manifested in the broad discretion allowed in States' criminal justice systems. Studies have identified a strong correlation between minority status and harsher criminal sentences.[17] Evidence from some States shows that implicit bias, including stereotypes that people of colour are violent, affects criminal investigations.

24. High levels of discretion in States' criminal justice systems facilitate racial and ethnic profiling and result in a disproportionate representation of minority populations in detention facilities.[18] In 2014, 60 per cent of those incarcerated in one North American state were members of racial and ethnic minorities.[19] Additionally, several states have initiated campaigns to crack down on drug use. Those campaigns have resulted in a severe disproportionality of minorities in the composition of prison populations.[20] For example, one study carried out in a North American state found that males of African descent were nearly 12 times more likely to be sent to prison for a drug offence than other men, despite surveys showing that both groups used and sold drugs at roughly the same rates.[21]

C. Legal policy and regulatory frameworks prohibiting racial and ethnic profiling, and similar measures, policies and laws adopted at the international, regional and national levels

25. In response to the manifestations of the phenomenon described above, the Special Rapporteur recalls that international and regional organizations and States have adopted a variety of laws and instruments to combat and prohibit the use of racial and ethnic profiling.

1. International legal policy and regulatory frameworks

26. Racial and ethnic profiling is prohibited under international human rights law and is contrary to various provisions such as the right to live free from racial discrimination, the right to equality before the law, the right to personal freedom and security and the right to the presumption of innocence. More specifically, the International Convention on the Elimination of All Forms of Racial Discrimination prohibits, in its articles 2, 4, 5 and 7, the use of racial profiling. Furthermore, the general equality provision of the International Covenant on Civil and Political Rights (art. 26) and other specific guarantees therein

[16] Frank Gardner, "Risk profiling software tackles the terrorist threat", BBC news website, 21 November 2012, available from http://m.bbc.com/news/technology-20412478.

[17] William T. Pizzi, Irene V. Blair and Charles M. Judd, "Discrimination in sentencing on the basis of Afrocentric features", *Michigan Journal of Race and Law*, vol. 10 (2005), p. 327.

[18] Angela Y. Davis and Dylan Rodriguez, "The challenge of prison abolition: a conversation", *Social Justice*, vol. 27 (2000), p. 212.

[19] Christina R. Rivers, "Civil death and the execution of democracy: black political power in the 'New Jim Crow' era of mass incarceration, National Conference of Black Political Scientists (Wilmington, 2014), available from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2404105.

[20] James Austin and others, "The use of incarceration in the United States", *Critical Criminology*, vol. 10 (2001), pp. 17–41 (2001), and Frank Rudy Cooper, "The un-balanced Fourth Amendment: a cultural study of the drug war, racial profiling and Arvizu", *Villanova Law Review*, vol. 47 (2002), p. 851.

[21] Marc Mauer and David Cole, "Five myths about incarceration", *Washington Post*, 17 June 2011, available from http://www.washingtonpost.com/opinions/five-myths-about-incarceration/2011/06/13/AGfIWvYH_story.html.

prohibit racial discrimination in relation to "the right to liberty and security of person", outlaw "arbitrary arrest or detention", and bar deprivation of liberty "except on such grounds and in accordance with such procedure as are established by law" (art. 9 (1)).

27. The Special Rapporteur recalls that a number of United Nations human rights mechanisms have addressed the issue of the use of racial and ethnic profiling in the police, at immigration and border controls and in detention facilities. More specifically, the Committee on the Elimination of Racial Discrimination has made it clear that the International Convention on the Elimination of All Forms of Racial Discrimination prohibits States parties from carrying out profiling on the basis of race or ethnicity. In its general recommendation No. 13 on the training of law enforcement officials in the protection of human rights, the Committee recalled the provisions of article 2 of the Convention, which require States parties to ensure that public authorities and institutions do not engage in racial discrimination, and the undertaking by States parties to guarantee the rights, protected under article 5 of the Convention, to equality before the law, without distinction as to race, colour or national or ethnic origin. The Committee also explained that those obligations relied on national law enforcement officers who should be properly informed of their State's obligations and of the Code of Conduct for Law Enforcement officials (see General Assembly resolution 34/169, annex).

28. Furthermore, the Committee reiterated its position on racial and ethnic profiling in its general recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system. The Committee advised that States should prevent questioning, arrests and searches that are based solely on the physical appearance of a person which exposes the person concerned to greater suspicion. Specifically, the relevant State officials include the police, army personnel, customs authorities, and persons working in airports, penal institutions and social, medical and psychiatric services. The Committee has directly applied these recommendations on racial and ethnic profiling to its evaluations on individual States parties.

29. The Human Rights Committee concluded in 2009 that a case of racial profiling in the context of immigration control constituted discrimination. In that particular case, specifically assessing identity checks for immigration purposes in the light of articles 2 (3) and 26 of the International Covenant on Civil and Political Rights, the Committee considered that:

> Identity checks carried out for public security or crime prevention purposes in general, or to control illegal migration, serve a legitimate purpose. However, when the authorities carry out such checks, the physical or ethnic characteristics of the people subjected thereto should not by themselves be deemed indicative of their possible illegal presence in the country. Nor should they be carried out in such a way as to target only people with specific physical or ethnic characteristics. To act otherwise would not only negatively affect the dignity of the people concerned, but would also contribute to the spread of xenophobic attitudes in the public at large and would run counter to an effective policy aimed at combating racial discrimination.[22]

30. Other United Nations mechanisms have also affirmed States' obligations to eliminate racial and ethnic profiling. In the Durban Declaration and Programme of Action, States were explicitly called upon to design, implement and enforce effective measures to eliminate this phenomenon.[23] The Working Group on the Universal Periodic Review has regularly reminded States of their obligations to combat racial and ethnic profiling. In 2007,

[22] Communication No. 1493/2006, *Rosalind Williams Lecraft* v. *Spain*, Views adopted on 27 July 2009.

[23] See A/CONF.189/12 and Corr.1, chap. I, para. 72.

the Working Group of Experts on People of African Descent devoted its sixth session to this issue and adopted the definition of the practice outlined in the Durban Declaration and Programme of Action. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism called attention to this issue too, in the context of "terrorist profiles" (A/HRC/13/37).

31. Finally, in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence,[24] as a result of the collaboration of several special procedures mandate holders, it was recommended that States enhance their engagement in broad efforts to combat negative stereotypes of, and discrimination against, individuals and communities on the basis of their nationality, ethnicity, religion or belief.

2. Regional legal policy and regulatory frameworks

32. As regards Europe, the European Convention on Human Rights does not contain explicit provisions regarding racial and ethnic profiling. However, a number of rights protected by the Convention are relevant to making legal arguments and claims in relation to the practice, in particular provisions such as the right to liberty and security (art. 5), the right to respect for private and family life (art. 8), the right to an effective remedy (art. 13) and prohibition of discrimination (art. 14). Moreover, there are two relevant protocols to the European Convention on Human Rights, which provide for freedom of movement (protocol No. 4) and a general prohibition on discrimination (protocol No. 12).[25]

33. The European Court of Human Rights has ruled on an application regarding racial profiling. It found that the practice constituted unlawful discrimination.[26]

34. The European Commission against Racism and Intolerance, established in 1993 by the Council of Europe, underlined, in its general policy recommendation No. 11 on combating racism and racial discrimination in policing, that racial and ethnic profiling was not an acceptable or valid response to the challenges of the everyday reality of combatting crime, including terrorism. The Commission stressed that racial and ethnic profiling was a form of racial discrimination, and thus violated human rights, reinforced stereotypes and lacked effectiveness, and led to less human security (para. 25). Moreover, the Commission has issued four specific recommendations to members of the European Union on this issue, namely that member States should "clearly define and prohibit racial and ethnic profiling by law" (para. 1); "carry out research on racial profiling and monitor police activities in order to identify racial profiling practices, including by collecting data broken down by grounds such as national or ethnic origin, language, religion and nationality in respect of relevant police activities" (para. 2); "introduce a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria" (para. 3); and "train the police on the issue of racial profiling and the use of the reasonable suspicion standard" (para. 4).

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[24] Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Conclusions and recommendations from the four regional expert workshops organized by the Office of the High Commissioner for Human Rights, in 2011, and adopted by experts in Rabat on 5 October 2012. Available from http://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf.

[25] Open Society Justice Initiative, Case Digests, *International Standards on Ethnic Profiling: Standards and Decisions from the European Systems* (2013).

[26] European Court of Human Rights, *Timishev* v. *Russia*, Application Nos. 55762/00 and 55974/00, Judgment of 13 December 2005.

35. The Commissioner for Human Rights of the Council of Europe has consistently condemned the practice of racial and ethnic profiling and has stated that it constitutes a potential violation of article 14 of the European Convention on Human Rights. The Commissioner has warned about the underlying assumption behind terrorist profiling and has denounced the large number of innocent people harassed as a result of the practice. The Commissioner has also questioned the effectiveness and results of the practice, warned against its deleterious effects on police–community relations, and recommended that effective policing methods be developed that are based on individual behaviour or accumulated intelligence or both. Similarly, the Commissioner has stated that stop-and-search actions based on ethnic or religious grounds are counterproductive and violate human rights standards. The Commissioner has called for the establishment of a reasonable suspicion standard as the basis for stop and search by law enforcement officials. Finally, the Commissioner has denounced ethnic profiling practices targeting Roma, including special (biometric) databases, police raids and discriminatory border checks, as well as the disproportionate levels of stop and search, and has called for an end to these practices, and has recommended the monitoring of police activities, in particular through the collection of disaggregated data.[27]

36. The European Union has adopted a legal framework with provisions against racial and ethnic profiling, including in the consolidated version of the Treaty on European Union and the consolidated Treaty on the Functioning of the European Union. Moreover, the Charter of Fundamental Rights of the European Union has provisions for guaranteeing equality before the law and prohibiting discrimination. In addition, the Council of the European Union adopted its racial equality directive on 29 June 2000, which enshrines the principle of equal treatment of persons, irrespective of their racial or ethnic origin.[28]

37. The Special Rapporteur also notes that the European Parliament issued a recommendation on profiling, in particular on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs, and border control, stating that racial and ethnic profiling raised "deep concerns about conflict with non-discrimination norms".[29] The European Parliament stressed that the use of ethnicity, national origin or religion as factors in law enforcement investigations "must pass the scrutiny tests of effectiveness, necessity and proportionality", warned that "profiling based on stereotypical assumptions may exacerbate sentiments of hostility and xenophobia in the general public", and recommended the adoption of a clear definition of profiling, the use of anonymous ethnic statistics to identify discrimination in law enforcement practices, the establishment of strong safeguards, and effective and accessible redress mechanisms for victims of profiling.

38. The European Union Network of Independent Experts on Fundamental Rights issued an opinion on racial and ethnic profiling in 2006, in which it recommended the adoption of a legal framework to prohibit this practice, to the extent that factors such as race or ethnicity or religion or national origin should not be used as indicators of criminal behaviour, either in general or in the specific context of counter-terrorism. It also recommended the use of statistics to highlight the discriminatory attitudes of law enforcement agencies practising racial profiling. The Network recommended States to define with the greatest clarity possible the conditions under which law enforcement

[27] Council of Europe Commissioner of Human Rights, *Human Rights of Roma and Travellers in Europe* (Strasbourg, Council of Europe Publishing, 2012), p. 84.

[28] Council directive of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (2000/43/EC).

[29] European Parliament recommendation to the Council of 24 April 2009 on the problem of profiling, notably on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs and border control (2008/2020(INI)).

authorities may exercise discretionary powers in areas such as identity checks or stop-and-search procedures and to sanction any behaviour amounting to racial or ethnic profiling, not only through the use of criminal penalties but also by providing civil remedies to victims or by means of administrative or disciplinary sanctions.[30]

39. In 2010, the European Union Agency for Fundamental Rights issued a comprehensive report on racial and ethnic profiling that made reference to European Union norms on the protection of personal data and non-discrimination. The Agency has warned that stop and search motivated "solely or mainly" on the basis of one's race, ethnicity or religion constitutes discrimination and is unlawful. In its report, the Agency suggested that suspicion should be based on individual behaviour (that does not include physical appearance) and has warned about the damaging effects of ethnic profiling on community relations and about the inefficiency of the practice. The Agency recommended that officers receive training on racial and ethnic profiling and that their stop-and-search operations be monitored through the collection of racially disaggregated data, provided that anonymity and informed consent are guaranteed.[31]

40. The African Charter on Human and Peoples' Rights is intended to promote and protect human rights and basic freedoms on the continent. This instrument contains provisions that contribute to the prohibition of racial and ethnic profiling, such as those on the right to freedom from discrimination (art. 2); the right to equality before the law and equal protection of the law (art. 3); the right to personal liberty and protection from arbitrary arrest (art. 6); and the right to freedom of movement (art. 12).[32]

41. The Organization of American States has several human rights instruments to combat discrimination. The American Convention on Human Rights contains provisions on the right to personal liberty (art. 7); the right to privacy (art. 11); freedom of movement and residence (art. 22); and the right to equal protection (art. 24). In 2006, the Permanent Council of the Organization of American States set up a working group to draft the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, which was adopted by the Organization's General Assembly on 5 June 2013 and provides a consolidated legal framework to eradicate racism and intolerance in the Americas, although at the time of writing the present report it had not entered into force.[33]

42. The Inter-American Commission on Human Rights, in 2009, defined racial and ethnic profiling as a tactic "adopted for supposed reasons of public safety and protection" that is "motivated by stereotypes based on race, colour, ethnicity, language, descent, religion, nationality, place of birth, or a combination of these factors, rather than on objective suspicions", and that "tends to single out individuals or groups in a discriminatory way based on the erroneous assumption that people with such characteristics are prone to engage in specific types of crimes".[34] Similarly, the Inter-American Commission, in a report on the situation of persons of African descent, stated that such persons were more likely to be suspected, chased, prosecuted and condemned, compared to the rest of the population. The Commission has received reports detailing the selective arrest of such persons on the

[30] European Union Network of Independent Experts on Fundamental Rights, "Ethnic profiling" (CFR-CDF Opinion4 2006), p. 7.

[31] European Union Agency for Fundamental Rights, *Towards More Effective Policing: Understanding and Preventing Discriminatory Ethnic Profiling: A Guide* (Luxembourg, Publications Office of the European Union, 2010), p. 64.

[32] African Commission on Human and Peoples' Rights. Available from www.achpr.org/instruments/achpr/ (accessed on 2 February 2015).

[33] Available from http://www.oas.org/en/sla/dil/inter_american_treaties_A-68_racism.asp.

[34] Inter-American Commission on Human Rights, report No. 26/09 (admissibility and merits), case 12.440, Wallace de Almeida (Brazil), 20 March 2009, para. 143.

grounds of racial profiling, unjustified police surveillance and negative interactions with the police, disproportionate arrest rates, and their overrepresentation in the criminal justice system.

D. Examples of initiatives taken at the national level to counter and challenge racial and ethnic profiling

43. In the section below, the Special Rapporteur presents an overview of a number of legislative, policy and institutional initiatives that have been taken by States, and other stakeholders including civil society actors, to counter and challenge racial and ethnic profiling.

1. National legal frameworks

44. The issue of racial and ethnic profiling has been addressed through national frameworks and different initiatives such as guides and recommendations published by Governments. In the United Kingdom of Great Britain and Northern Ireland, the Race Relations (Amendment) Act 2000 extended the prohibition on racial discrimination to the performance of public functions by public authorities, including the police, the border control agency and other government departments. Section 19B (1) of the Act now provides that "it is unlawful for a public authority in carrying out any functions of the authority to do any act which constitutes discrimination".[35]

45. Also in the United Kingdom, the Equality Act 2010 unifies existing non-discrimination laws under a single act and has established a legal framework to protect individual rights and advance equal opportunity. The Act applies to all organizations providing a public service, including the police service, customs and excise officers, tax officers, health and safety officers, immigration authorities, and the prisons and probation service.[36] The aims of the Act are to eliminate unlawful discrimination, harassment and victimization and other conducts prohibited under its provisions, to advance equality of opportunity for minority groups and to foster good relations between minorities and the rest of the community.

46. In 2003, the Government of the United States issued a guidance note in 2003 regarding interactions between different races and officers of the federal law enforcement agencies. The guidance note, which was updated in December 2014, originates from the Department of Justice[37] and establishes mechanisms to combat racial and ethnic profiling in law enforcement. In regard to routine or spontaneous law enforcement decisions, the guidance note states that federal law enforcement officers may not use race or ethnicity to any degree in a specific suspect description. In conducting activities in connection with a specific investigation, federal law enforcement officers may consider race and ethnicity only to the extent that (a) there is trustworthy information; (b) the information is relevant to the locality or time frame; and (c) the information links persons of a particular race or ethnicity to an identified criminal incident, scheme, or organization. Where there are investigations or situations of threat regarding national security, catastrophic events or border control matters, federal law enforcement officers may not consider race or ethnicity

[35] Available from http://www.legislation.gov.uk/ukpga/2000/34/contents.

[36] Available from http://www.legislation.gov.uk/ukpga/2010/15/contents. The Equality Act 2010 is law in England, Scotland and Wales. Northern Ireland is covered by separate legislation.

[37] Available from http://csgjusticecenter.org/law-enforcement/publications/guidance-for-federal-law-enforcement-agencies-regarding-the-use-of-race-ethnicity-gender-national-origin-religion-sexual-orientation-or-gender-identity/.

except to the extent permitted by the Constitution and laws. The guidance note only applies to federal agencies and not to state and local authorities, which conduct the vast majority of the law enforcement functions, but the updated version now applies to Department of Homeland Security and intelligence activities. The Special Rapporteur is pleased with this updated and comprehensive version and hopes that it may serve as a model of good practice for other authorities, as well as in other countries.

47. In the United States of America, states and local authorities have enacted legislation that outlaws racial profiling while requiring data collection. At the federal level, the End Racial Profiling Act was introduced into the Senate in May 2013; at the time of the writing of the present report, it was still under discussion. This Act would prohibit law enforcement personnel and agencies from engaging in racial profiling and would require federal law enforcement agencies to maintain adequate policies and procedures to eliminate racial and ethnic profiling and to cease the existing practices that at present allow it to continue. The Act would also require state or local government entities or tribal councils applying for grants or federal funding to certify that they maintain adequate policies and procedures for eliminating racial and ethnic profiling and have eliminated any such existing practices.[38] Finally, the Act would authorize the Attorney-General to award grants and contracts for the collection of data relating to racial and ethnic profiling and the development of good practices and systems to eliminate such practices.

48. With regard to Sweden, the Aliens Act provides that a person may not be stopped or checked solely on account of his or her skin colour, name, language or other similar characteristic. In that connection, standards and guidance can provide officers with clear instructions on permissible versus impermissible uses of ethnicity, race and national origin in conducting their work.[39]

2. Policy and institutional standards

49. In some countries, codes of conduct have been developed for law enforcement agents which prohibit the use of ethnicity, religion and national origin in targeting persons as suspects, which also include the requirement that law enforcement officers base their decisions on reasonable suspicion.[40] In France, the code of conduct of the national police prohibits discrimination and calls for polite and respectful treatment of the public and anyone apprehended. This code applies to all national law enforcements officials, including those carrying out immigration and counter-terrorism functions.[41] Police codes of conduct set out similar standards in Austria and in Northern Ireland.

50. The Special Rapporteur has been informed that a number of good practices based on behavioural profiles have been implemented in immigration enforcement. This is important in focusing officers' attention on behavioural risk factors rather than on assumptions about nationality, race or ethnicity. For instance, Brussels Airport's information-based behavioural profiling system is an example of an intelligence-based system of profiles that uses behavioural factors.

51. The use of strategic action plans appears to be among the positive steps taken by States in response to an identified problem; such plans are sometimes politically mandated but are also undertaken by senior law enforcement leadership. They represent a political

[38] Available from https://www.congress.gov/bill/113th-congress/senate-bill/1038 (accessed on 17 February 2015).

[39] Aliens Act (*Utlänningslag*) (2005:716).

[40] Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices* (New York, 2012), p. 38.

[41] Commission nationale pour la déontologie de la sécurité, saisine No. 2009-77.

commitment to take steps to address a problem and can serve as a foundation and road map for action for tackling racial and ethnic profiling.[42]

3. Oversight and equality bodies

52. A number of States have established law enforcement oversight bodies and complaints mechanisms to address racial and ethnic profiling. Such mechanisms play an important role in identifying and drawing attention to discriminatory law enforcement practices and in proposing remedies. These institutions can be national equality bodies, or specialized police complaint and oversight bodies. In the United Kingdom, the Independent Police Complaints Commission investigates complaints and allegations of misconduct and can make policy recommendations. The Commission has overall responsibility for the police complaints system, and is charged by law with increasing public confidence in the police complaints system in England and Wales. The Commission is independent from the police or government.[43]

53. In addition to external civilian oversight of law enforcement, two other models exist in Europe. Denmark, Norway and Sweden have special law enforcement officers attached to the Prosecutor-General's office who receive and investigate complaints against police officers.[44] In France, the National Commission on Police Ethics, an independent administrative authority created in 2000, ensures compliance with ethics rules by French law enforcement officers. Individuals can present complaints to the Commission via a member of the National Assembly or the Senate, the Ombudsman's office, the High Authority against Discrimination and for Equality, the Children's Defender, or the General Supervisor of Places of Detention and Deprivation of Liberty.

54. Other countries have set up equality bodies that undertake investigations or provide redress in cases of discrimination. Many have powers to investigate practices, review policies and issue recommendations. In that connection, in Canada, the Ontario Human Rights Commission published recommendations to end racial and ethnic profiling in a 2003 report entitled "Paying the price: the human cost of racial profiling".[45] In the Netherlands, the Dutch National Bureau against Discrimination has wide-ranging powers which include oversight of law enforcement. In Sweden, the Ombudsman against Discrimination may deal with complaints against the police under the 2010 anti-discrimination law. In Northern Ireland, the Human Rights Commission examines cases of racial and ethnic profiling at borders by immigration officers, using direct observation and interviews with immigration officers about their decision-making.[46]

55. Also regarding the United Kingdom, the Metropolitan Police Authority in London has set up a scrutiny panel on stop and search, which has statutory responsibility to hold the Metropolitan Police Service accountable for its performance. In the United States, the American Civil Liberties Union, a non-governmental organization (NGO), has taken a lead role in advocating for investigations by police–community advisory bodies.[47] In Germany,

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[42] Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices*, p. 51.

[43] Independent Police Complaints Commission website, https://www.ipcc.gov.uk/ (accessed on 16 March 2015).

[44] Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices*, p. 57.

[45] Available from http://www.ohrc.on.ca/en/paying-price-human-cost-racial-profiling.

[46] Northern Ireland Human Rights Commission, *Our Hidden Borders* (Belfast, 2009). Available from http://www.statewatch.org/news/2009/apr/Our%20Hidden%20Borders%20April%202009.pdf.

[47] See http://crr.ca/divers-files/en/onGoing/racProf/rep/eRacProfRepRacProfFctSh.pdf.

the Bureau for the Implementation of Equal Treatment NGO[48] has successfully challenged, in the administrative courts, the practice of identity checks carried out by the border police in trains and train stations solely on the basis of racial and ethnic criteria and in a discretionary and discriminatory manner. Finally, in Australia in 2013, the Victoria Police made groundbreaking announcements that it would invite communities to comment about its practices and then undertake a self-examination, set up a policy on field contacts, which would include data collection, provide cross-cultural training to its agents, and publish a public report on the results of the exercise.[49]

4. Training and awareness-raising

56. The Special Rapporteur was made aware of different examples of training undertaken by law enforcement agencies to eliminate racial and ethnic profiling carried out by their staff. However, it is important to note that this practice is difficult to eradicate by training measures alone, and that these should be combined with other measures to reduce the use of profiling, such as good supervisory practices and clear operational procedures. Diversity and sensitivity training can also be found in other parts of the public sector, beyond law enforcement. Cultural sensitivity training seeks to educate officers about the cultures of specific ethnic groups with whom they have frequent contact but with whom they lack personal familiarity.[50]

57. In Ireland, and in Northern Ireland (United Kingdom), the "Diversity Works" training, developed jointly by the two police agencies, provides intercultural and diversity training for law enforcement officers. In Sweden, officers receive "specific police tactics" training, which addresses racial and ethnic profiling and explains applicable standards and practical examples to eliminate the practice.[51] As regards Belgium, the Belgian Federal Judicial Police has two experts on Islam (trained in Islamic and Arabic studies), who provide advice and training to police officers with counter-terrorism responsibilities and encourage them not to rely on stereotypes or profiling when making assessments of individuals or organizations.[52]

58. The Special Rapporteur was informed that another set of measures that have been taken by some States concern policy audits to identify institutional factors that may be driving or permitting racial and ethnic profiling. Such audits provide policy recommendations for addressing racial and ethnic profiling. They give law enforcement institutions the opportunity to review their policies both force-wide and at the local level, to learn how policies are translated into practice, to assess their effectiveness, and to measure their impact on different communities.[53]

59. Such audits have been used to address ethnic profiling by police forces in Canada and in the United Kingdom, more specifically to review the use of stop-and-search powers by these law enforcement agencies. In Northern Ireland, the Police Service is required to consult on the impact of all changes to policies; those found to have a disproportionate

[48] Büro zur Umsetzung von Gleichbehandlung e.V.

[49] See http://www.policeaccountability.org.au/wp-content/uploads/2014/03/Equality-is-not-the-same_Victoria-Police-Response-to-Community-Consultation-and-Reviews2.pdf.

[50] Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices*, p. 125.

[51] Ibid.

[52] Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices*, p. 133.

[53] Ibid., p. 135.

impact on specific communities have been amended as a result.[54] In the Netherlands, the Amsterdam Police has contracted independent auditors to examine the organization and its work. One of the auditors focused on the information and preconceptions that drive police choices about interventions. That research was followed up by a qualitative study involving interviews with between 50 and 60 police officers about their rationale for deciding who to stop and search.[55] As regards Romania, the Romanian Police Strategic Initiative developed a similar model for assessing the policing of Roma persons.[56]

5. Reaching out to minorities

60. Another important good practice is the recruitment of persons from minority backgrounds to law enforcement agencies. Some States, for example in Europe, have set up specialized diversity units to fight racial and ethnic profiling and to increase their agencies' representativeness and diversity. These units can address diversity issues within the law enforcement agency, and through outreach to minority communities.

61. The Special Rapporteur considers that community outreach and involvement constitute another set of good practices. Efforts to address racial and ethnic profiling should involve local communities at the grass-roots level; this includes the law enforcement agencies, which must be engaged within their communities in order to gain their trust and respect. In the United Kingdom, the West Yorkshire Police regularly holds "street briefings", where senior officers give briefings in public places such as parks, community centres and commercial thoroughfares. Members of the public can listen to the briefing, which is given by officers before they go on patrol, and are invited to join in and highlight local issues and concerns. The reaction to these briefings has been positive, as they increase visibility and help officers to understand and target local issues.[57] In the Netherlands, the National Diversity Expertise Centre has an expert group of approximately 50 police officers of different ethnic backgrounds who are seconded to the group for up to 80 hours a year on an as-needed basis. The expert group can be called on to troubleshoot problems in multi-ethnic areas. It not only addresses issues as they arise, but also assists the police service in identifying any relevant findings, such as a lack of minority representation in law enforcement.[58] In Ireland, the interracial cultural office holds annual consultations with ethnic minority communities to discuss good practices, minorities' needs and concerns, and the work of ethnic liaison officers, among other topics.[59] Other positive examples identified include working with traditionally marginalized groups such as young people, travellers and irregular migrants. In South Africa, the African Centre for Migration and Society has worked with members of migrant communities who have been victims of xenophobic attacks and whose shops have been targeted, together with local police and community leaders, to end discrimination, promote dialogue and enquire into policing practices.

6. Data collection

62. Finally, the Special Rapporteur wishes to recall the importance of disaggregated data collection in regard to racial and ethnic profiling, which is essential in order to measure the

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[54] Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices*, p. 136.

[55] Ibid.

[56] See http://www.europeandialogue.org.

[57] See http://www.westyorkshire.police.uk/hatecrime.

[58] Open Society Foundations, *Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices*, p. 155.

[59] Justice Initiative interviews with Travellers, June 2008, Caroline Keane, Pavee Point Travellers' Centre, June 2008, Finglas Gardai, June 2008.

actions of law enforcement agencies, particularly in connection with discretionary actions such as identity checks and stop and search. Data collection can serve as a tool to increase the transparency and accountability of law enforcement agencies. In Europe, the United Kingdom is the only country to systematically gather national data on law enforcement and ethnicity under legal mandate. British law requires police forces in England and Wales to gather ethnic data on police stop-and-search practices.[60] The Suffolk County and West Yorkshire police forces issue a receipt to persons who have been stopped, which records details of the reason for the stop, and the identity both of the person concerned and of the police officer. A similar initiative has been developed in the municipality of Fuenlabrada, Spain, with the support of the European Commission. Such data collection can be a tool to reduce ethnic profiling and to improve trust in the police within minority communities. In the United States, in New York, the Legal Aid Society has launched the "Cop Accountability Program", a database containing information about wrongdoing by New York City police officers, which was set up to help public defenders at court hearings to contest the credibility of police officers who have engaged in misconduct and misbehaviour. Using such information to monitor the performance of law enforcement agents can reduce their individual discretionary powers and oblige them to rely on objective indicators of suspicion rather than on subjective factors, when deciding whom to stop. This good practice has been shown to lead to increased police efficiency.

IV. Conclusions and recommendations

63. **Racial and ethnic profiling in law enforcement constitutes a violation of human rights for the individuals and groups targeted by these practices, because of its fundamentally discriminatory nature and because it exacerbates discrimination already suffered as a result of ethnic origin or minority status. Furthermore, racial and ethnic profiling harms already tenuous relationships between law enforcement agencies and minority communities, at a time when members of minority communities need to be reassured about their inclusion and participation in society. Unfortunately, the use of racial and ethnic profiling has increased following terrorist attacks in the United States and in Europe. The practice has targeted particular individuals and communities solely on the basis of their race, ethnicity, national origin or religion, and has attracted disproportionate attention from law enforcement agencies at a time when their resources are scarce.**

64. **Combating the use of racial and ethnic profiling in law enforcement constitutes a new and complex challenge. The Special Rapporteur nonetheless stresses that the Durban Declaration and Programme of Action, other international human rights instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, and certain regional instruments referred to earlier provide a comprehensive framework to combat the use of racial and ethnic profiling in law enforcement. To that end, the Special Rapporteur welcomes the continued interest and attention of the Committee on the Elimination of Racial Discrimination, which has issued useful general recommendations to States parties in this regard.**

65. **The Special Rapporteur notes the numerous legal and policy efforts that have been initiated at the regional and national levels to address the use of racial and ethnic profiling and to offer viable and credible alternatives. Legislative measures are central to any strategy to combat discrimination and racism by law enforcement agencies; for**

[60] Section 95 of the Criminal Justice Act 1991.

this reason, the Special Rapporteur encourages States that have not enacted specific legislation outlawing the use of racial and ethnic profiling to consider doing so.

66. The Special Rapporteur recommends a clear and unequivocal prohibition of the use of racial and ethnic profiling by law enforcement agencies. Outlawing racial and ethnic profiling would require modifying national legislation to incorporate an express prohibition on the use of such profiling. The outlawing of racial and ethnic profiling should also be considered at the regional level.

67. The Special Rapporteur calls upon political leaders and heads of law enforcement agencies to speak out publicly against discrimination and to avoid making statements linking race or ethnicity to criminal behaviour, irregular migration or terrorism, in order to repair the harm caused to minority communities by the use of racial and ethnic profiling and to ensure that these groups and individuals are able to fully integrate into their societies.

68. The Special Rapporteur recommends to States to gather law enforcement data, including statistics disaggregated by ethnicity and race, which are essential in order to prove the existence and the extent of racial and ethnic profiling. Such statistics are an essential tool for enabling the detection of law enforcement practices that focus disproportionate and unwarranted attention on racial and ethnic minorities based on stereotypes about ethnicity and crime. In order to properly collect such data, close scrutiny of the three main stages of collection, storage and access is required, in order to prevent any possible misuse of the data. This is particularly important in law enforcement, where there are clear risks that ethnic data could be used to facilitate racial and ethnic profiling, rather than to reduce it. Data protection standards must balance the need of law enforcement to collect and retain data for the purposes of detecting, preventing and investigating crime, against the right to privacy and the presumption of innocence.

69. When statistics, disaggregated by race and ethnicity, are available on law enforcement actions, they provide an important insight into law enforcement practices and are the cornerstone that proves the use of racial and ethnic profiling. These statistics can be useful for the development of new policies and practices, particularly where census data are not available or appear to be inaccurate, or where there are no available law enforcement data and there are concerns about racial profiling. Similarly, sharing data with minority communities is a positive step taken by some States which should be further encouraged.

70. Furthermore, the Special Rapporteur encourages investigative oversight bodies to monitor the conduct and practices of law enforcement agencies and to investigate individual complaints. Oversight bodies should have the authority to address allegations of racial and ethnic profiling, and should inform practical recommendations for policy changes in order to eliminate the use of racial and ethnic profiling. Such bodies should also be able to collect data to monitor direct and indirect discrimination and to conduct self-initiated investigations, as these are fundamental in identifying discrimination such as profiling by law enforcement agencies.

71. The Special Rapporteur recommends that law enforcement agencies adopt a practical and holistic approach to training. Practical training linked to specific powers, actions and activities of law enforcement is usually more effective than general diversity training. Training should be combined with other complementary measures to reduce ethnic profiling, such as supervisory practices and operational procedures, with the participation of minority communities.

72. The Special Rapporteur also strongly recommends that law enforcement agencies provide their officers with clear standards and instructions on permissible

versus impermissible uses of ethnicity, race and national origin in conducting their work. Requiring that law enforcement officers have objective grounds for reasonable suspicion on the basis of a person's behaviour rather than on the basis of their appearance is a fundamental safeguard against ethnic profiling and should be clearly established as a prerequisite before any police or immigration stop. Operational protocols, regulations and training should provide detailed and practical guidance for all law enforcement officers on how to carry out their duties in full compliance with non-discrimination standards.

73. In this connection, the Special Rapporteur calls for a limitation of the discretionary powers of law enforcement agents to reduce the risks of racial and ethnic profiling. There are several approaches to limiting discretion; they are not mutually exclusive but can be used in a complementary manner. Such strategies may include improving the quality and precision of intelligence-gathering and making sure that law enforcement agents use this information in their decision-making, increasing the supervision of law enforcement officers' discretionary decisions, and enhancing civilians' understanding of their rights and responsibilities in encounters with law enforcement agents and their ability to hold them accountable for their use of their powers. Similarly, civilian monitors, civil society actors and international organizations should be given the necessary access to monitor effectively the checks and controls of the different types of law enforcement agencies.

74. The Special Rapporteur reminds all stakeholders of the importance of information-sharing; information should be disseminated appropriately to the different minority communities. Moreover, law enforcement agencies should welcome and support voluntary contacts and interaction with civilians, which demonstrate commitment to transparency and community oversight. In this regard, the Special Rapporteur encourages outreach to minority communities and recommends better collaboration between law enforcement agencies and minority communities.

75. Finally, combating the use of racial and ethnic profiling by law enforcement agencies requires a multi-stakeholder approach. In this regard, the role of civil society is fundamental. The Special Rapporteur has highlighted the work of civil society actors in public education, and advocacy, including efforts to lobby for the passage of data collection and anti-profiling legislation, as well as to litigate on behalf of individuals who have been victims of these practices by law enforcement agencies.